

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BENSON MILLS INC,

Plaintiff,

v.

KENNETH FORTENBERRY et al,

Defendant.

CASE NO. C23-0686-KKE

ORDER GRANTING MOTION TO
EXTEND INITIAL CASE DEADLINES
AND ORDERING DEFENDANT BE
SERVED BY JANUARY 15, 2024

This matter comes before the Court on Plaintiff, Benson Mills', third ex-parte motion to extend initial case deadlines. Dkt. No. 13.

On May 10, 2023, Benson Mills filed this complaint against Mr. Fortenberry and John Does 1–10 alleging Mr. Fortenberry sells “competitive products bearing or including designs that are identical or substantially similar to those of Benson Mills, and that infringe copyrights owned by Benson Mills.” Dkt. No. 1 ¶ 9. The parties have submitted takedown notices under the Digital Millennium Copyright Act (“DMCA”) through Amazon’s ecommerce platform against each other. *Id.* ¶¶ 9–12. Benson Mills brings the following four causes of action: fraudulent DMCA takedown notices, business defamation, violation of the Washington Consumer Protection Act, and unfair competition. *Id.* ¶¶ 16–39.

1 Since the complaint was filed, the Court has granted Benson Mills' motion for expedited
2 discovery (Dkt. No. 8), and two extensions of the initial disclosure and joint status report deadlines
3 (Dkt. Nos. 10 & 12). Benson Mills now asks the Court to extend these deadlines for a third time
4 "to allow time for service on Defendant in light of the information received from Amazon in late
5 November." Dkt. No. 13 at 2. Benson Mills states that it has attempted to serve Mr. Fortenberry
6 three times based on this recently received information regarding his address. The Court therefore
7 finds that Benson Mills has established good cause to extend the initial case deadlines. New
8 deadlines will be ordered after Mr. Fortenberry is served.

9 Rule 4(m) requires a plaintiff to serve a complaint on defendant(s) within 90 days or the
10 court "must dismiss the action without prejudice against the defendant or order that service be
11 made within a specified time." Fed. R. Civ. P. 4(m). As more than 90 days have elapsed since the
12 complaint was filed, the Court must order a date certain by which Benson Mills must complete
13 service. The Court can only extend this deadline upon a showing of good cause. *Id.* For the same
14 reasons the Court finds good cause to extend the initial case deadlines, the Court also finds good
15 cause to extend the service deadline.

16 The Court GRANTS Plaintiff's motion to extend the initial case deadlines. Dkt. No. 13.
17 The Court will order new deadlines after service upon Defendant is completed.

18 The Court further ORDERS Plaintiff to serve Defendant(s) under Federal Rule of
19 Procedure 4, by January 15, 2024.

20 Dated this 8th day of December, 2023.

21 

22 _____
23 Kymberly K. Evanson
24 United States District Judge